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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,325	01/31/2002	William Kress Bodin	AUS920010855US1	3989
34533	7590	03/28/2007	EXAMINER	
INTERNATIONAL CORP (BLF)			LANEAU, RONALD	
c/o BIGGERS & OHANIAN, LLP				
P.O. BOX 1469			ART UNIT	
AUSTIN, TX 78767-1469			PAPER NUMBER	
			3714	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/062,325

Applicant(s)

BODIN ET AL.

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-11, 18-21 and 28-30 is/are rejected.
- 7) ☒ Claim(s) 4-7, 12-17 and 22-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The response filed on 12/22/06 has been entered. Claims 1-30 remain pending.

Claim Rejections - 35 USC §102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 11 and 18-20 are rejected under 35 U.S.C. §102(e) as being anticipated by Reber et al. (U.S. 5,798,694).

Reber discloses means for providing inventory item attributes comprising data attributes wherein the inventory items attributes describe an inventory item (the tag must have attributes to separate it from other tags; RFID identification tag 30 and code field (inherent), the RFID tag detects changes, records changes, compares control values with acceptable values, and takes action if those actions are outside a range (e.g. if a refrigerated item has a temperature which is outside an acceptable range, notification is made).

Claim Rejections - 35 USC §103

4. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11 and 18-20, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Reber. It is the Examiner's principle position that the claims are anticipated because of the RFID identification tag code field is inherent.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Reber to expressly indicate an RFID identification tag code field. Such a modification would have made it clear that RFID tags require unique ID numbers in order to properly identify the tag.

Claims 1-3, 8-10, 21 and 28-30, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Reber. Because Inventions I and III are not patentably distinct from Invention II, the patentability of Inventions I and III as currently claimed stands or falls with the patentability of Invention II.

The Examiner concludes that Applicants have decided not to be their own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action, the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s).

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Second, the Examiner finds that not only have Applicants not pointed to definitional statements in their specification or prosecution history, Applicants have also not pointed to a term or terms in a claim with which to draw in those statements with the required clarity, deliberateness, and precision. Third, after receiving express notice in the previous Office Action of the Examiner's position that lexicography is not invoked, Applicants have not pointed out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (*i.e.* Applicants have not argued lexicography is invoked). Finally and to be sure of Applicants' intent, the Examiner also notes that Applicants have declined the Examiner's express invitation to be their own lexicographer. It remains the Examiner's position that these requirements were reasonable. Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and except for the application of 35 U.S.C. §112 6th paragraph), the heavy presumption in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their "broadest reasonable interpretation" *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). The Examiner now relies heavily and extensively on this interpretation. Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

Under the broadest reasonable interpretation standard noted above and unless expressly modified in this Office Action, the Examiner maintains his interpretations including the statements and/or definitions of claim limitations as noted in previous Office Action. Those previous definitions are part of the administrative record and, in accordance with *In re Morris*, are provided simply as a factual source to support the Examiner's claim interpretations (and

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ultimately the Board of Patent Appeals and Interferences claim interpretations if necessary) during ex parte examination.

The Examiner maintains his position that claims 11, 18-20, 21 and 28-30 are product or machine claims. Applicants' arguments have been considered but are not persuasive.

Allowable Subject Matter

6. Claims 4-7, 12-17 and 22-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the references, either singularly or in continuation, teaches or even suggests the following limitations:

As per claim 4, a method wherein: the inventory item attributes further comprise a control value unit field set to 'freshness'; detecting changes in the inventory attributes of the inventory item further comprises: reading from a clock the time when the inventory item is removed from a refrigerator, reading the temperature from a kitchen thermometer, reading from the clock the time when the inventory item is returned to the refrigerator, and calculating a freshness coefficient in dependence upon the time when removed, the time when returned, and the temperature; and recording detected changes comprises storing the freshness coefficient in the control value.

As per claim 5, a method wherein: the inventory item attributes further comprise a control value unit field set to 'utilization'; detecting changes in the inventory attributes of the inventory item includes detecting that the inventory item has been removed from and returned to

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an inventory storage location; and recording detected changes comprises incrementing the control value, wherein the control value represents the number of times the inventory item has been utilized.

As per claim 6, a method wherein: the inventory item comprises a quantity of separate items; the inventory item attributes further comprise a control value unit field set to 'count'; detecting changes in the inventory attributes includes detecting that one of the separate items has been removed from inventory; and recording detected changes comprises decrementing the control value, wherein the control value represents the quantity of separate items.

As per claim 7, a method wherein: the inventory item attributes further comprise: a control value unit field set to 'days', and an inventory date representing the date when the inventory item entered inventory; detecting changes comprises: reading from a clock the current date, and calculating the age of the inventory item in dependence upon the current date and the inventory date; and recording detected changes comprises storing the age of the inventory item in the control value.

As per claim 12, a system wherein the computer program instructions capable of detecting changes, computer program instructions capable of recording detected changes, program instructions capable of comparing the control value and the acceptable control value range, and computer program instructions capable of taking action are carried out through Java servlets in at least one OSGI-compliant service bundle installed and operating in an OSGI-compliant service gateway.

As per claim 13, a system wherein: the inventory item attributes further comprise a control value unit field set to 'pounds'; program instructions capable of detecting changes

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includes program instructions capable of reading the weight of the inventory item from a scale; and computer program instructions capable of recording detected changes comprises computer program instructions capable of storing the weight of the inventory item in the control value.

As per claim 14, a system wherein: the inventory item attributes further comprise a control value unit field set to 'freshness'; program instructions capable of detecting changes in the inventory attributes of the inventory item further comprises: program instructions capable of reading from a clock the time when the inventory item is removed from a refrigerator, program instructions capable of reading the temperature from a kitchen thermometer, computer program instructions capable of reading from the clock the time when the inventory, items returned to the refrigerator and computer program instructions capable of calculating a freshness coefficient in dependence upon the time when removed, the time when returned, and; the temperature and computer program instructions capable of recording detected changes comprises computer program instructions capable of storing the freshness coefficient in the control value.

As per claim 15, a system wherein: the inventory item attributes further comprise a control value unit field set to 'utilization'; computer program instructions capable of detecting changes in the inventory attributes of the inventory item includes computer program instructions capable of detecting that the inventory item has been removed from and returned to an inventory storage; location; and computer program instructions capable of recording detected changes comprises computer program instructions capable of incrementing the control value, wherein the control value represents the number of times the inventory item has been utilized.

As per claim 16, a system wherein: the inventory item comprises a quantity of separate items; the inventory item attributes further comprise a control value unit field set to 'count'; computer program instructions capable of detecting changes in the inventory attributes includes computer program instructions capable of detecting that one of the separate items has been removed from inventory; and computer program instructions capable of recording detected changes comprises computer program instructions capable of decrementing the control value, wherein the control value represents the quantity of separate items.

As per claim 17, a system wherein: the inventory item attributes further comprise: a control value unit field set to 'days', and an inventory date representing the date when the inventory item entered inventory; program instructions capable of detecting changes comprises: program instructions capable of reading from a clock the current date, and computer program instructions capable of calculating the age of the inventory item in dependence upon the current date and the inventory date; and computer program instructions capable of recording detected changes comprises computer program instructions capable of storing the age of the inventory item in the control value.

As per claim 22, a computer program product wherein the computer program instructions capable of detecting changes, computer program instructions capable of recording detected changes, program instructions capable of comparing the control value and the acceptable control value range, and computer program instructions capable of taking action are carried out through Java servlets in at least one OSGI-compliant service bundle installed and operating in an OSGI-compliant service gateway.

As per claim 23, a computer program product wherein: the inventory item attributes further comprise a control value unit field set to 'pounds'; program instructions capable of detecting changes includes program instructions capable of reading the weight of the inventory item from a scale; and computer program instructions capable of recording detected changes comprises computer program instructions capable of storing the weight of the inventory item in the control value.

As per claim 24, a computer program product wherein: the inventory item attributes further comprise a control value unit field set to 'freshness'; program instructions capable of detecting changes in the inventory attributes of the inventory item further comprises: program instructions capable of reading from a clock the time when the inventory item is removed from a refrigerator, program instructions capable of reading the temperature from a kitchen thermometer, computer program instructions capable of reading from the clock the time when the inventory, items returned to the refrigerator and computer program instructions capable of calculating a freshness coefficient in dependence upon the time when removed, the time when returned, and; the temperature and computer program instructions capable of recording detected changes comprises computer program instructions capable of storing the freshness coefficient in the control value.

As per claim 25, a computer program product wherein: the inventory item attributes further comprise a control value unit field set to 'utilization'; computer program instructions capable of detecting changes in the inventory attributes of the inventory item includes computer program instructions capable of detecting that the inventory item has been removed from and returned to an inventory storage; location; and computer program instructions capable of

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recording detected changes comprises computer program instructions capable of incrementing the control value, wherein the control value represents the number of times the inventory item has been utilized.

As per claim 26, a computer program product wherein: the inventory item comprises a quantity of separate items; the inventory item attributes further comprise a control value unit field set to 'count'; computer program instructions capable of detecting changes in the inventory attributes includes computer program instructions capable of detecting that one of the separate items has been removed from inventory; and computer program instructions capable of recording detected changes comprises computer program instructions capable of decrementing the control value, wherein the control value represents the quantity of separate items.

As per claim 27, a computer program product wherein: the inventory item attributes further comprise: a control value unit field set to 'days', and an inventory date representing the date when the inventory item entered inventory; program instructions capable of detecting changes comprises: program instructions capable of reading from a clock the current date, and computer program instructions capable of calculating the age of the inventory item in dependence upon the current date and the inventory date; and computer program instructions capable of recording detected changes comprises computer program instructions capable of storing the age of the inventory item in the control value.

Response to Arguments

7. Applicants' arguments filed 12/22/06 have been fully considered but they are not persuasive.

Applicant argues that Reber does not anticipate the claimed invention. In response to Applicant's arguments, Applicants are respectfully reminded that during ex parte examination, anticipation requires the Examiner to meet the 'All Elements Test.' "It is axiomatic that anticipation of a claim under §102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question.... "117 re King, 231 USPQ 136, 138 (Fed. Cir. 1986); see also In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) ("To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently."). In other words, all elements of the claimed invention must be disclosed in some fashion for the claim to be anticipated. Logically, the lack of a single element would negate anticipation. "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986). Yet it is important to keep in mind that "[a]n anticipatory reference, however, need not duplicate word for word what is in the claims." *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 953 F.2d 1360, 1369, 21 USPQ2d 1321, 1328 (Fed. Cir. 1991). "While a reference must be considered not only for what it expressly teaches, but also for what it fairly suggests.... "In re Bell, 991 F.2d 781, 785, 26 USPQ2d 1529, 1532 (Fed. Cir. 1993) (citations and quotations omitted).~7 In other words, "[t]he use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." In re Heck, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983)(quoting In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). However, anticipation is also based upon a combination of a prior art

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reference and the knowledge of one of ordinary skill in the art. "A reference anticipates a claim if it discloses the claimed invention 'such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. [Emphasis in original.]" In re Graves, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995) citing In re LeGrice, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962). See also In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985) for the same statement of law and also citing In re LeGrice. Applicants' arguments regarding anticipation have been fully considered but because those arguments fail to account for or consider the skilled artisan's 'knowledge of the particular art' in combination with a reference, such arguments are not persuasive. Applicant has made some valid points concerning some of the limitations in the dependent claims and the Examiner now objects to some of the dependent claims. Claims 1-30 remain pending.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

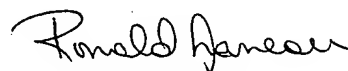
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on 7:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ronald Laneau
Primary Examiner
Art Unit 3714

3/24/07